

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 18-cr-02945

SUBHANAH WAHHAJ,

Defendant.

SUBHANAH WAHHAJ'S SENTENCING MEMORANDUM

Subhanah Wahhaj, by and through her counsel, The Law Office of Ryan J. Villa, by Ryan J. Villa, and Justine Fox-Young, P.C., by Justine Fox-Young, presents this sentencing memorandum and respectfully asks that the Court consider the 18 U.S.C. § 3553(a) factors and her unique personal history in deciding what sentence to impose and grant her objection to a sentence of life imprisonment pursuant to 18 U.S.C. Section 1201, as detailed in her separately filed objection pursuant to the Eighth Amendment. *See* Doc. 1112.

I. BACKGROUND¹

Subhanah Wahhaj was born on February 28, 1983, in New York City to her mother Balkis Wahhaj and her father Siraj Wahhaj. She is one of nine children. Ms. Wahhaj's father presently lives in Brooklyn, New York where he serves as imam of the Al-Taqlwa mosque, and her mother resides in Jamaica Queens, New York where she works as a social worker. Ms. Wahhaj herself lived in New York until approximately 2008 before moving to Egypt from 2008 to 2011, Atlanta,

¹ The facts herein are corroborated by Ms. Wahhaj's presentence report as well as the history gleaned and reported by Bureau of Prisons ("BOP") medical providers during the course of Ms. Wahhaj's BOP evaluation.

Georgia from 2011 to 2017; and then Taos, New Mexico for a short period of time before her arrest in this case.

Ms. Wahhaj and her siblings were raised in the Muslim faith, and she remains a dedicated and observant Muslim who has dedicated her life to her family, her Muslim studies and her writing. She left home at the age of 24 when she married Lucas Morton, and the two started a family of their own, ultimately having five children, the last of whom was born while Ms. Wahhaj was in custody on this case.

Ms. Wahhaj attended three different grade schools, two junior high schools and then attended Benjamin Banneker High School in Brooklyn. Throughout, Ms. Wahhaj suffered from bullying and peer problems due to her Muslim faith and dress customs. Despite this, she earned good grades and graduated from high school in 2001 and went on to attend Medgar Evers University, part of the City University of New York system, in Brooklyn. She commuted from home, earned B's and A's, and received a bachelor's degree in English in approximately 2005. At the time, Ms. Wahhaj's goals were to be a journalist. After graduating, Ms. Wahhaj worked for two years as a program coordinator at the Center for Black Literature. In approximately 2008, the defendant earned a specialist certification to teach English as a Second Language.

She later began a publishing company called "The Write Patch" after she wrote and self-published a memoir titled, "How I Found Myself in Egypt," although since 2008, Ms. Wahhaj has mainly relied on the financial support of her husband and has worked as a homemaker. In Alexandria, Egypt, Mr. Morton worked as an English teacher, and Ms. Wahhaj attended classes learning to recite the Koran in Arabic. Her first child was born in Egypt, and Ms. Wahhaj was pregnant with their second child when she later returned home to her mother's house in New York due to depression. Ms. Wahhaj experienced similar depressive episodes with each subsequent

pregnancy, the last being during the time she was in Amalia at the behest of her husband in the leadup to their arrest in this case.

II. Ms. Wahhaj's Travel to and Presence in New Mexico Was Incidental to the Criminal Conduct In This Case

As is detailed in the motion for a judgment of acquittal, the Government altogether failed to present evidence sufficient to establish beyond a reasonable doubt that Ms. Wahhaj conspired to kidnap AG, that Ms. Wahhaj transported or planned to transport AG across state lines at a time when to do so was unlawful, or that AG's death was foreseeable to Ms. Wahhaj. *See* Doc. 144. As was undisputed at trial, Ms. Wahhaj traveled to New Mexico in a caravan of vehicles that included AG and then lived on the same property with AG in Amalia. Ms. Wahhaj's presence during the trip west and once in New Mexico in no way contributed to the child's death, and Ms. Wahhaj asks that the Court take this into account in assessing the arguments against a life sentence pursuant to the Eighth Amendment and in sentencing her.

Sentencing policy under United States law rests upon several competing policies. Section 3553(a) touches upon several of those policies and offers guidance to the courts in cases such as this one. With regard to the sentence ultimately imposed, Congress has directed sentencing courts to pronounce sentences which are sufficient but not harsher than necessary to reflect the seriousness of the offense, promote respect for the law, provide adequate punishment, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide a defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. *See* 18 U.S.C. § 3553. To assure that the goals of sentencing are achieved, "§ 3553(a) directs sentencing courts to consider: (i) the Guidelines; (ii) the offense's nature and the defendant's character; (iii) the available sentences; (iv) a policy

favoring uniformity in sentences for defendants who commit similar crimes; and (v) the need to provide restitution to victims.” *United States v. Herlihy*, 336 F.R.D. 217, 228 (D.N.M. 2020).

WHEREFORE, Defendant Subhanah Wahhaj, by and through undersigned counsel, respectfully requests that this Court decline to impose a life sentence and instead sentence her to a period of incarceration commensurate with her extremely limited role in this case.

Respectfully submitted,

/s/ Ryan J. Villa

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was filed through the CM/ECF system on this 16th day of February, 2024.

/s/ electronically filed

Justine Fox-Young